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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

SAMMY R. QUAIR, SR.,
Plaintiff,
v.
GERTZ, et al.,
Defendants.

Nos. 2:11-cv-2293 JAM CKD P /
2:11-cv-2294 KJN KJM P
ORDER

Plaintiff, a state prisoner proceeding pro se, has filed two civil rights actions pursuant to 42 U.S.C. § 1983. The first action, Quair v. Gertz, No. 2:11-cv-2293 JAM CKD P (E.D. Cal.) (“Quair I”), was commenced on August 29, 2011, alleging that defendant Gertz, a correctional officer at the Butte County Jail, violated the Eighth Amendment by failing to protect plaintiff from harm. The case proceeded through summary judgment, and on June 18, 2013, defendant’s motion for summary judgment was granted.

The second action, Quair v. Honea, et al., No. 2:11-cv-2294 KJM KJN P (E.D. Cal.) (“Quair II”), was also commenced on August 29, 2011. Here, plaintiff alleged that three officials at the Butte County Jail conspired to violate, and did violate, plaintiff’s constitutional rights to access the courts and be free from retaliatory conduct. Specifically, plaintiff alleged that

1 defendants conspired to deny him access to the courts by refusing to provide him copies of the
2 grievances he submitted concerning Gertz's alleged failure to protect him. Plaintiff alleged that
3 defendants withheld this evidence of exhaustion of administrative remedies in order to thwart his
4 lawsuit against Gertz, and that they did so in retaliation for protected activities. The case
5 proceeded through summary judgment and, on September 13, 2013, defendants' motion for
6 summary judgment was granted.

7 Plaintiff appealed the judgments in both cases, and the United States Court of Appeals for
8 the Ninth Circuit issued a single order resolving both appeals. Quair v. Gertz, No. 13-16483 and
9 Quair v. Honea, et al., No. 13-17233, slip. op. (9th Cir. Oct. 28, 2014).

10 In Quair I, the Ninth Circuit

- 11 • Affirmed summary judgment for Gertz; but
- 12 • Vacated in part and remanded to allow plaintiff to file a first amended complaint.

13 In Quair II, the Ninth Circuit

- 14 • Affirmed summary judgment as to the conspiracy claim;
- 15 • Affirmed the district court's denial of plaintiff's motion for counsel; but
- 16 • Noted that, "[f]or the first time on appeal, Quair contends that he needed copies of
17 the grievances and inmate request slips to litigate his action against Gertz,
18 including investigating other potential defendants and claims";
- 19 • Vacated in part and remanded "for consideration of Quair's newly-raised argument
20 [on appeal] as it relates to his access to courts and retaliation claims."

21 In both cases, the Ninth Circuit rejected plaintiff's contentions concerning his requests for
22 pro per privileges at the jail's law library, and his arguments regarding Rand notice. It also
23 "strongly suggest[ed] that the district court consider consolidating these actions on remand."

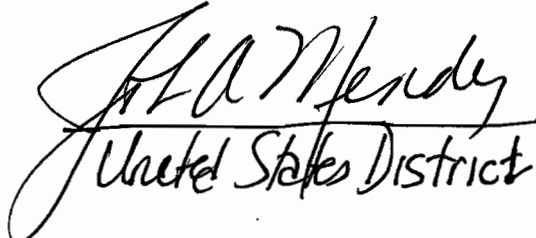
24 Federal Rule of Civil Procedure 42(a) permits the Court to consolidate actions involving a
25 common question of law or fact, and consolidation is proper when it serves the purposes of
26 judicial economy and convenience. "The district court has broad discretion under this rule to
27 consolidate cases pending in the same district." Investors Research Co. v. United States District
28 Court for the Central District of California, 877 F.2d 777 (9th Cir. 1989). In determining whether

1 to consolidate actions, the Court weighs the interest of judicial convenience against the potential
2 for delay, confusion, and prejudice caused by consolidation. Southwest Marine, Inc., v. Triple A.
3 Mach. Shop, Inc., 720 F. Supp. 805, 807 (N.D. Cal. 1989). Here, the two actions involve
4 common questions of law and fact, and in light of the above factors, consolidation is warranted.

5 Accordingly, IT IS HEREBY ORDERED that:

- 6 1. The actions Quair v. Gertz, No. 2:11-cv-2293 JAM CKD P and Quair v. Honea, et al.,
7 No. 2:11-cv-2294 KJM KJN P are consolidated;
- 8 2. The Clerk of Court shall file a copy of this order in both cases in order to notify all
9 parties of the consolidation;
- 10 3. Upon filing this order, the Clerk of Court shall administratively close Quair v. Honea, et
11 al., No. 2:11-cv-2294 KJM KJN P; and
- 12 4. All future filings shall be in Quair v. Gertz, No. 2:11-cv-2293 JAM CKD P.

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